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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY HAND DELIVERY

Ms. Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 96-61

Dear Ms. Keeney:

IT&E Overseas, Inc. ("IT&E"), by its attorneys, hereby submits its response to your letter, dated June 5, 1996, requesting a plan for implementing Section 254(g) of the Communications Act of 1934, as amended ("Communications Act"), as applied to the interexchange services that IT&E provides to the Territory of Guam ("Guam") and the Commonwealth of the Northern Mariana Islands ("CNMI"). You have requested that IT&E submit the plan within two weeks (i.e., by June 19, 1996) and that such plan include proposed rates and a timetable for introducing these rates.

IT&E believes that the request for a plan to implement rate integration for Guam and the CNMI at this time is premature and inappropriate, in view of the pending status of the rulemaking proceeding in CC Docket 96-61, in which the Federal Communications Commission ("FCC" or "Commission") is considering the adoption of rules requiring rate averaging and rate integration throughout the United States, including noncontiguous U.S. points such as Guam and the CNMI. Although the FCC has issued a Notice of Proposed Rulemaking soliciting comments and reply comments on its proposal to adopt a rule requiring rate averaging and rate integration, it has not yet completed its review of these comments and has not concluded its proceeding regarding the matter. See Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61 (released March 25, 1996) ("Interexchange NPRM"). Under these circumstances, the directive in your letter appears to improperly prejudice the issues raised in CC Docket No. 96-61.

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Ms. Regina M. Keeney

June 19, 1996

Page 2

IT&E, along with other interested parties, diligently and in good faith submitted thoughtful comments and reply comments regarding the precise issue of whether and under what circumstances to require rate averaging and rate integration for Guam and the CNMI. Specifically, IT&E noted in its comments that the Joint Explanatory Statement accompanying the Telecommunications Act of 1996 ("Telecom Act") provides that the geographic rate averaging and rate integration provisions of the Telecom Act "simply incorporate[] in the Communications Act the existing practice of geographic rate averaging and rate integration for interexchange, or long distance, telecommunications rates to ensure that rural customers continue to receive such service at rates that are comparable to those charged to urban customers."^{1/} Since the FCC's existing domestic rate integration policy has never been applied to Guam and the CNMI, IT&E explained in its filings that the proposed extension of rate integration to Guam and the CNMI would require the FCC to resolve unique economic and policy issues that have not been addressed in prior proceedings implementing rate integration for other noncontiguous U.S. points such as Alaska, Hawaii, Puerto Rico, and the Virgin Islands. IT&E accordingly urged the FCC to convene a working group or task force to reach a well-considered resolution of the novel and complex issues raised by the proposed extension of the existing rate integration policy to Guam and the CNMI.^{2/} IT&E further noted that the FCC is obligated to forbear from enforcing any rule requiring rate integration for Guam and the CNMI to the extent that such a rule would impede the growth of competition and would not be necessary to protect consumers and ensure just and reasonable rates.^{3/}

A number of parties who submitted comments on the issue agreed with IT&E's position that because of the unique circumstances facing Guam and the CNMI, the proposed extension of rate integration to those areas involves complex issues requiring more extensive discussion and analysis than the simple codification of the FCC's existing rate integration policy as it applies to other noncontiguous U.S. points.^{4/} For example, Guam and the

^{1/} Comments of IT&E, at 15 (filed April 19, 1996) (quoting Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 129 (1996) (emphasis added)).

^{2/} Id. at 5-6.

^{3/} Id. at 20-23.

^{4/} See, e.g., Joint Comments of the Governor of Guam and the Guam Telephone Authority, at 5-6 (filed April 19, 1996) (proposing that a working group be convened to develop mechanisms for implementing rate integration for Guam, in light of the "enormously
(continued...)

Ms. Regina M. Keeney

June 19, 1996

Page 3

CNMI are not yet included in the North American Numbering Plan, and the Guam Telephone Authority, the incumbent local exchange carrier on Guam, has not yet converted to cost-based access tariffs for interexchange carriers. Other parties have identified specific concerns regarding the unintended adverse consequences of mechanically applying the FCC's existing rate integration policy to Guam and the CNMI without regard to the unique telecommunications markets of those areas.^{5/}

In recognition of these unique circumstances, the Governor of Guam has convened a working group consisting of all interested parties to identify, discuss, and attempt to resolve by consensus the novel issues raised by the FCC's proposed extension of rate integration to Guam and the CNMI. The first set of meetings was held on Guam from May 20 to May 23, 1996. The second set of meetings was held in Washington, D.C. from June 10 to June 12, 1996. During the D.C. meetings, the Governor of the CNMI joined with the Governor of Guam to co-sponsor the working group. Although the FCC has been invited and encouraged to participate in the Working Group, no representative from the FCC has attended any of these meetings. Despite the FCC's absence at these meetings, the participants of the Guam/CNMI Working Group have made considerable progress in narrowing the issues raised

^{4/} (...continued)

complex" task of implementing rate integration); Comments of JAMA Corporation, at 2 (filed April 18, 1996) (arguing that the issue of extending rate integration to Guam "must go through a deliberate and participatory joint board rulemaking process"); Reply Comments of PCI Communications, Inc., at 3 (filed May 3, 1996) (urging the FCC to convene a working group or task force "to consider the unique economic and technical circumstances involved in extending rate integration to Guam and the CNMI").

^{5/} See, e.g., Comments of GTE, at 21 (filed April 19, 1996) ("Small regional carriers with a very limited calling base and high costs . . . can be drastically impacted by rate integration if forced to compete against large carriers with lower costs and huge customer bases over which they can spread these costs."); Comments of MCI Telecommunications Corp., at 37-38 (filed April 19, 1996) (raising concerns regarding high costs of service to Guam); Comments of Sprint Corp., at 24 (filed April 19, 1996) (noting that rate integration could have "unintended, unforeseen and adverse competitive consequences" in light of the "very different state of technology and the very different state of competition that exists today"); Comments of AT&T Corp., at 29 (filed April 19, 1996) (rigid rate integration rules would "drive up the costs and prices of carriers that serve high cost areas"); Comments of Columbia Long Distance Services, Inc., at 6 (filed April 19, 1996) ("[T]he Commission should not ignore the fact that the circumstances of providing service to Guam and CNMI are completely different from those that have supported rate integration in the past.").

Ms. Regina M. Keeney

June 19, 1996

Page 4

by the proposed extension of rate integration to Guam and the CNMI and in identifying possible solutions. In fact, the Guam/CNMI Working Group currently has under review a set of tentative proposals regarding the implementation of rate integration, which may form the basis for a consensus on certain issues. The Guam/CNMI Working Group is scheduled to re-convene in Washington, D.C. on July 8 and 9 1996.

The valid concerns raised by IT&E and other parties who submitted comments responding to the Interexchange NPRM deserve meaningful consideration and an adequate response by the FCC, not a cursory letter peremptorily dismissing such concerns and instructing the interexchange carriers serving Guam and the CNMI to submit a rate integration compliance plan within two weeks. By issuing such a letter, the FCC improperly has prejudged the outcome of its pending proceeding to consider whether to adopt a rate integration rule without having completed its review of all the comments submitted in that proceeding. A rush to implement rate integration without having developed a complete and accurate record will only lead to imprudent rulemaking that may harm those consumers who are the intended beneficiaries of such rulemaking. Furthermore, the FCC is aware that the Guam/CNMI Working Group is meeting to discuss and attempt to resolve consensually the difficult issues regarding the proposed implementation of rate integration. Although the FCC apparently has chosen not to participate in these meetings, it should at a minimum afford the Guam/CNMI Working Group a meaningful opportunity to complete its work.

Assuming, however, that the Commission ultimately adopts a valid rule requiring the extension of its existing rate integration policy to Guam and the CNMI, IT&E notes that it already is in substantial compliance with the Telecom Act's requirements concerning rate integration and rate averaging. Since IT&E is a regional interexchange carrier which originates traffic only on Guam and the CNMI, the rate integration and rate averaging provisions of the Telecom Act appear to require only that IT&E charge the same rates to its subscribers in Guam and the CNMI for calls to the mainland. To the extent that there exists any differential between the rates charged to subscribers on Guam and those charged to subscribers in the CNMI for calls to the mainland, such a rate differential reflects the higher costs of serving the CNMI. Currently, calls placed from the CNMI to the U.S. mainland must be routed through Guam. Since presently there is no operational undersea cable between Guam and the CNMI, such calls require the use of INTELSAT space segment purchased at Comsat's monopoly rates.^{6/} The higher cost of these calls also is the result

^{6/} See Reply Comments of the Governor of Guam, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, at 6 (filed May 7, 1996) (recognizing that "[s]atellite services between Guam and all other areas of the United States are only available

(continued...)

Ms. Regina M. Keeney

June 19, 1996

Page 5

of the exorbitant, non-cost-based access charges that IT&E must pay to the Micronesian Telecommunications Corporation ("MTC"), a GTE Operating Company that serves as the exclusive provider of local exchange services as well as a primary provider of interexchange services to the CNMI.^{7/} Because of the significantly higher costs resulting from Comsat's monopoly rates for INTELSAT space segment and MTC's non-cost-based access charges, the long distance rates charged by IT&E to its subscribers in the CNMI may be higher than those charged to its subscribers on Guam.

The FCC's proposed rule mandating rate averaging and rate integration for Guam and the CNMI apparently would require IT&E to geographically average its rates between Guam and the CNMI and result in higher rates to subscribers on Guam. IT&E does not believe that the higher costs of service to the CNMI should be borne by the residents of Guam. Although rate integration and rate averaging may have been intended to spread the high costs of serving discrete, insular areas among a national pool of subscribers, it was never intended to require small regional carriers, such as IT&E, to spread the high costs of service to a discrete, insular area among a limited pool of subscribers residing in another high-cost, insular area.

Unlike the ubiquitous national carriers who serve Guam and the CNMI, IT&E does not have a national pool of interstate revenues that would minimize the overall impact of rate averaging and rate integration on the company. Accordingly, IT&E requests the FCC to exercise its forbearance authority pursuant to Section 10 of the Communications Act to permit IT&E to charge rates that reflect the cost differential between serving Guam and the

^{6/} (...continued)

through Intelsat facilities" and proposing that Comsat, as the monopoly provider of INTELSAT space segment in the United States, be required to provide INTELSAT space segment at affordable rates)

^{7/} IT&E has reason to believe that MTC currently is engaging in anticompetitive and unlawfully discriminatory practices by charging IT&E approximately twice as much for access service as it charges its own local exchange subscribers for a local toll call over comparable distances. Thus, IT&E believes that MTC's access charges are not reasonably justified by the cost of providing such service. Furthermore, IT&E has reason to believe that MTC is discriminating against IT&E by either failing to impute the same access charges to its own interexchange operation or improperly cross-subsidizing its interexchange operation with revenues from its local exchange operation. See Memorandum of IT&E Overseas, Inc. in Opposition to GTE Corporation's Motion to Terminate the Decree, United States v. GTE Corporation, Civil No. 83-1298 (HHG) (filed June 26, 1995).

Ms. Regina M. Keeney
June 19, 1996
Page 6

CNMI. Since the higher rates charged to subscribers in the CNMI, as opposed to those on Guam, reflect a direct cost difference over which IT&E has no control, such rates are just and reasonable. Thus, the FCC's proposed rule mandating rate averaging and rate integration, as applied to IT&E's unique situation, is not necessary to ensure just and reasonable rates or to protect consumers. Therefore, the FCC should exercise its forbearance authority with respect to IT&E's rates for service to the mainland from Guam and the CNMI.

Very truly yours,

A handwritten signature in cursive script that reads "Margaret L. Tobey, P.C.".

Margaret L. Tobey, P.C.
Phuong N. Pham, Esq.

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